

SOUTER, J., dissenting

**SUPREME COURT OF THE UNITED STATES**

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No. 99–9136

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EARTHY D. DANIELS, JR., PETITIONER  
*v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[April 25, 2001]

JUSTICE SOUTER, with whom JUSTICE STEVENS and JUSTICE GINSBURG join, dissenting.

In *Custis v. United States*, 511 U. S. 485 (1994), we held that a federal defendant facing an enhanced sentence on the basis of prior state convictions under the Armed Career Criminal Act of 1984 (ACCA), 18 U. S. C. §924(e), could not, with one exception, challenge the constitutionality of the underlying state convictions at his federal sentencing proceeding. *Custis* was thus a precursor of the case before us now; *Custis* is not, however, compelling authority for today’s disposition. Although the Court’s opinion in *Custis* struck me as portending more than it strictly held, a reading of the case free of portent was in fact the understanding of one Member of the *Custis* majority: “*Custis* presented a forum question. The issue was *where*, not *whether*, the defendant could attack a prior conviction for constitutional infirmity.” *Nichols v. United States*, 511 U. S. 738, 765 (1994) (GINSBURG, J., dissenting) (emphasis in original). The door in *Custis* remained open to an attack on the prior state convictions, through a state or federal habeas challenge to the underlying convictions themselves. See *Custis, supra*, at 497 (*Custis* “was still ‘in custody’ for purposes of his state convictions at the time of his federal sentencing under §924(e),” and could thus “attack his state sentences in Maryland or through

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federal habeas review”). This case presents the distinct question of what happens when that door has been closed.

The Court’s reasons for reading 28 U. S. C. §2255 (1994 ed., Supp. V) as restrictively as it read the ACCA sentencing provisions have nothing to do either with the text of §2255 or with any extension of rules governing habeas review of state convictions under 28 U. S. C. §2254 (1994 ed. and Supp. V). The language of §2255 providing a federal prisoner with the right to relief because a sentence “was imposed in violation of the Constitution or laws of the United States” is obviously broad enough to include a claim that a prior conviction used anew to mandate sentence enhancement under the ACCA was obtained unconstitutionally, so that the new sentence itself violates the terms of the ACCA or the Constitution.<sup>1</sup> Nor does the Court rest its exclusion of such claims from §2255 review on the theory that a §2255 petitioner who challenges underlying state convictions should be required, like a §2254 petitioner, to exhaust state remedies and to comply

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<sup>1</sup>The Government argues, citing *Custis v. United States*, 511 U. S. 485 (1994), that 28 U. S. C. §2255 (1994 ed., Supp. V) does not provide a remedy here because “the Constitution is not violated when a conviction that is facially valid is used to enhance a sentence for committing another crime.” Brief for United States 12. This misstates the holding of *Custis*, which merely held (with one exception discussed below) that neither the ACCA nor the Constitution provides a forum at the sentencing hearing for challenges to the underlying conviction. 511 U. S., at 487. The constitutional holding was necessarily limited to the statutory scheme considered. And, in any event, §2255 provides an explicit remedy for a sentence that violates federal law, not solely the Constitution. Cf. *Hill v. United States*, 368 U. S. 424, 428 (1962) (describing types of fundamental errors that are cognizable under §2255). Neither the *Custis* Court nor today’s Court takes the position that the ACCA properly applies, as a statutory matter, to underlying sentences that are in fact invalid. See *Custis*, *supra*, at 497; *ante*, at 8. The language of §2255 invites a petitioner to establish such a statutory violation.

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with state procedural rules. Cf. 28 U. S. C. §§2254(b)–(c) (1994 ed. and Supp. V); *Rose v. Lundy*, 455 U. S. 509 (1982); *Coleman v. Thompson*, 501 U. S. 722 (1991). It is not clear, after all, that such requirements, premised largely on comity concerns and the State’s interest in the finality of its own judgments, see, e.g., *id.*, at 731–732, 750, should be imported into this context of a federal sentence imposed when a petitioner who has completed his state sentence seeks only to avoid a sentence enhancement under federal law. In any event, the Court does not purport to apply these specific requirements (which in the §2254 setting can be waived by the State, see 28 U. S. C. §2254(b)(3) (1994 ed., Supp. V); *Gray v. Netherland*, 518 U. S. 152, 165–166 (1996), and which are subject to explicit exceptions). Instead it imposes a flat ban on §2255 relief (subject, maybe, to narrow exceptions).<sup>2</sup>

Having no textual basis or related precedent in habeas law, the Court rules out challenges to ACCA sentencing predicates under §2255 on the same grounds invoked earlier to bar such challenges under the sentencing provisions of the ACCA itself: the ACCA ought to be easy to administer and state convictions ought to carry finality, *ante*, at 4–5. But whatever force these reasons might have if alternative avenues of challenge were open, they do not even come close to the horsepower needed to rule out the application of §2255 when the choice is relief under §2255

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<sup>2</sup> The Court continues to leave the door open (but with no promises) to a motion to revise an ACCA sentence if a defendant has first obtained an order vacating the predicate conviction through a state collateral proceeding or federal habeas review of the state judgment under 28 U. S. C. §2254 (1994 ed. and Supp. V). See *ante*, at 8; *Custis*, *supra*, at 497. The plurality adds the possibility of an exception to today’s rule if a petitioner can show newly discovered evidence or legal disability during the period of state custody. See *ante*, at 9–10. These exceptions will not eclipse the rule.

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or no relief at all. Why should it be easy to subject a person to a higher sentencing range and commit him for nearly nine extra years (as here) when the prisoner has a colorable claim that the extended commitment rests on a conviction the Constitution would condemn? If the answer is the value of finality in state convictions, why is finality valuable when state law itself does not demand it, and why is finality a one-way street? Why should a prisoner like Daniels suddenly be barred from returning to challenge the validity of a conviction, when the Government is free to reach back to it to impose extended imprisonment under a sentence enhancement law unheard of at the time of the earlier convictions (1978 and 1981 in this case)? Daniels could not have been expected in 1978 to anticipate the federal enhancement statute enacted in 1984; and even if he had been blessed with statutory clairvoyance, the practice in 1978 would have told him he could challenge the convictions when and if the Government sought to rely on them under the future enhancement statute. The ACCA was enacted against the backdrop of a pervasive federal practice of entertaining constitutional challenges to prior convictions when used anew for sentence enhancement, a practice on which Congress threw no cold water when it enacted the ACCA. See *Custis*, 511 U. S., at 499–501 (SOUTER, J., dissenting). Indeed, even the Court seems to find something disquieting in the historical practice, as it shows by recognizing a textually untethered exception to its own rule, one allowing for collateral attacks on prior convictions if based on violations of the right to counsel under *Gideon v. Wainwright*, 372 U. S. 335 (1963). See *ante*, at 8. I suppose I should not begrudge the Court's concession, but the *Gideon* exception, first announced in *Custis*, is inexplicable here. One might have argued in *Custis* that a *Gideon* violation was egregious enough to excuse the defendant's failure to resort to other forums still open; but there is no excuse for picking

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and choosing among constitutional violations here, when other forums are closed. The need to address *Gideon* is no reason to ignore *Moore v. Dempsey*, 261 U. S. 86 (1923), or *Mooney v. Holohan*, 294 U. S. 103 (1935) (*per curiam*), or *Brown v. Mississippi*, 297 U. S. 278 (1936), or *Strickland v. Washington*, 466 U. S. 668 (1984), or *Miranda v. Arizona*, 384 U. S. 436 (1966), or *Brady v. Maryland*, 373 U. S. 83 (1963), or any other recognized violations of the Constitution.

None of this is to say that the Court is wrong to recognize that collateral review of old state convictions can be very cumbersome. See *ante*, at 4. But that is not the only practical consideration in the real world we confront (or ought to confront) here. A defendant under the ACCA has generally paid whatever penalty the old conviction entailed; he may well have forgone direct challenge because the penalty was not practically worth challenging, and may well have passed up collateral attack because he had no counsel to speak for him. But when faced with the ACCA's 15-year mandatory minimum the old conviction is suddenly well worth challenging and counsel may be available under 18 U. S. C. §3006A(a)(2)(B). In denying him any right to attack convictions later when attacks are worth the trouble, the Court adopts a policy of promoting challenges earlier when they may not justify the effort and perhaps never will. That is a very odd incentive for a court to create, and the eccentricity is hardly softened by the likelihood that most defendants will not notice before it is too late.

Today's decision is devoid of support in either statutory language or congressional intention. I respectfully dissent.